IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1451 OF 1982
With
FIRST APPEAL NO. 1452 OF 1982
With
CROSS OBJECTION NO. 104 OF 2007
In FIRST APPEAL NO. 1451 OF 1982
To
CROSS OBJECTION NO. 105 OF 2007
In FIRST APPEAL NO. 1452 OF 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD. - Appellant(s)
Versus
KAMUBEN WD/O VIRSANGBHAI KESHARBHAI PATEL & ORS. - Respondent(s)

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Appearance :
Shri Arun H. Mehta for Appellant(s).
None for Respondent Nos.1 – 3 in F.A. No.1451 of 1982 though served.
None for Respondent Nos.1 - 6 in F.A. No.1452 of 1982 though served.
Shri Manan Shah for Respondent(s) : 4 – 5 in F.A. No.1451 of 1982 and for respondent Nos.7 and 8 in F.A. No.1452 of 1982.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/09/2007

ORAL JUDGMENT

These two appeals have been filed by the Insurance Company, being aggrieved by the award dated 31st March, 1982 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Sabarkantha District, Himmatnagar in M.A.C. Cases Nos.101 of 1979 and 102 of 1979. First Appeal No.1451 of 1982 arises out of M.A.C. Case No.101 of 1979, while First Appeal No.1452 of 1982 arises out of M.A.C. Case No. 102 of 1979. It appears that Cross Objections No.104 of 2007 has been filed in First Appeal No.1051 and Cross Objections No.105 of 2007 has been filed in First Appeal No.1452 of 1982.

2. Shri Arun H. Mehta, learned Counsel for the appellants, placing reliance upon a judgement of the Supreme Court in the matter of ***New India Assurance Company Limited vs. C. M. Jaya & Ors.***, [***AIR 2002 SC 651***], and ***National Insurance Co. Ltd. vs. Keshav Bahadur & Ors.***, [***AIR 2004 SC 1581***], submitted that the liability of the Insurance Company would be limited to the extent of 50%, interest thereupon and consequential costs, and nothing beyond that, in view of the fact that no extra premium has been paid to cover the risk of the third party and a comprehensive policy would not mean that risk of the third party would

remain unlimited.

3. Shri Manan A. Shah, learned Counsel for the driver and owner of the offending truck, however, submitted that in view of the comprehensive policy, the appellant was rightly held responsible to answer the award in its *toto*.

4. In the matter of ***New India Assurance Co. Ltd. vs. C.M. Jaya & Ors.,*** *(supra)*, which was later on followed by the Supreme Court in the matter of ***National Insurance Co. Ltd. vs. Keshav Bahadur & Ors.*** (*supra*), it was held by the Bench of five Judges that merely on the ground that the policy was a comprehensive policy, the liability of the Insurance Company would not cross the limit of Rs.50,000/- in terms of the policy. The Apex Court observed that the liability of the Insurance Company could be statutory or contractual, that is, a statutory liability cannot be more than what is required under the statute itself. The Apex Court further observed that there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. The Apex Court was of the opinion that if extra premium is not paid to cover extra risk of a third party, then, the liability of the Insurance Company would remain within the bounds of the statute.

5. In view of the said judgements of the Supreme Court, I have no hesitation in holding that the learned Tribunal below was unjustified in holding the appellant liable to the extent of 100%. Each of the appeals is partly allowed. As none appears for the respondents, who have filed Cross Objections, the said Cross Objections are dismissed for want of prosecution. The liability of the Insurance Company would be limited to the extent of Rs.50,000/-, plus interest awarded on it and proportionate costs.

6. If the Insurance Company has already made payment to the claimants, then, the Insurance Company would be entitled to recover the amount paid in exercise of its liability from the driver and owner of the offending truck; they would also be entitled to interest at the rate of 6% per annum from the date of the payment/deposit till realisation.

7. The appeals are, accordingly, allowed and the Cross Objections are dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**